Writ Appeal No.117 of 2006

Per G.S. Singhvi, CJ

The appellant who is said to have purchased 300 sq. yards of land forming part of Survey No.101 of Sadathnagar, Kandikal village, Bandlaguda Mandal, Hyderabad District from Mohammad Iqbal Ahmad vide agreement of sale dated 13.4.1998, filed Writ Petition No.25358 of 2005 against the threatened demolition of his property by the respondents, but could not persuade the learned Single Judge to exercise power of this Court under Article 226 of the Constitution of India. This is the reason why he has filed appeal under clause 15 of the Letters Patent.

It is borne out from the record that while the appellant had claimed right over the land on the basis of agreement of sale dated 13.4.1998 and pleaded that he cannot be dispossessed without resorting to the procedure prescribed under the Andhra Pradesh Land Encroachment Act, 1905 (for short 'the Act'). The respondents not only denied the existence of premises bearing No.18-1-544/5/A/1, which is said to have been purchased by the appellant, but also pleaded that the land bearing Survey No.101 is covered by the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Ceiling Act') and that the same was declared as surplus vacant land of one Sri G. Penta Reddy. According to the respondents, after taking possession the competent authority had allotted the surplus land to Housing Corporation, Schools, Hospitals etc. and the allottees have started constructions.

The learned Single Judge dismissed the Writ Petition making the following observations:

> There is a dispute as to the possession of the petitioner to the land allegedly in plot No.5A admeasuring 300 sq. yards. Though the petitioner filed a reply affidavit denying the counter averments, the contention of the Government that the land in S.No.101 is an urban land ceiling surplus, is not denied. Indeed, the various counter averments regarding proceedings under Land Acquisition Act remained uncontroverted. Further, admittedly, the petitioner purchased the property in S.No.101 under a notarized agreement of sale dated 13.4.1998 and the same is in contravention of the provisions of Urban

> Land Ceiling Act, is void and this Court cannot take cognizance of the said agreement of sale. In so far as the petitioner is concerned, if the petitioner is in possession of the property, it is open to him to approach the Civil Court for appropriate relief. This disputed question of fact cannot be decided in this writ petition.

Learned counsel for the appellant argued that even though the land in question may have been declared as excess land out of the property of G. Penta Reddy and his brothers, but the respondents should not be permitted to forcibly evict him or demolish his property without following the procedure established by law. According to the learned counsel, issuance of notice and passing of appropriate order under the Act, is a condition precedent to the taking of any action for dispossessing the appellant and demolishing his property and as no such procedure was followed, the learned Single Judge ought to have entertained his grievance and issued appropriate directions.

In the context of the submission made by the learned counsel, we asked him to show whether or not the land which his client is said to have purchased from Mohammad Iqbal Ahmed forms part of the surplus area of G. Penta Reddy and his brothers, which was determined vide order dated 16.7.1988. In reply, learned counsel submitted that he is not aware whether the land purchased by his client forms part of the surplus area, but reiterated that irrespective of the character of the land, the respondents should be ordained to follow the provisions of the Act before they can forcibly evict the petitioner.

In our opinion, there is no merit in the contention/submission of the learned counsel. A reading of the order under challenge shows that the learned Single Judge had taken note of the averments contained in the affidavit filed on behalf of the respondents, who pleaded that the land allegedly purchased by the appellant from Mohammed Iqbal is a part and parcel of 86,900 sq. meters of surplus land comprised in Survey Nos.97, 101, 116, 145 and 146 of Kandikal village. It is also borne out from the record that the possession of the surplus area was taken by the competent authority and the same was allotted to various agencies including Housing Corporation, Schools, Hospitals etc., and the allottees of the land have raised construction.

In our opinion, without challenging the proceedings taken by the competent authority

under the Ceiling Act and declaration dated 16.7.1988 made in respect of the land in question, the appellant cannot lay any claim or right over it on the basis of an agreement of sale allegedly executed on 13.4.1988 by Mohammad Iqbal Ahmed. The so-called vendor did not have any right over the land in question. Therefore, the purchaser i.e. the appellant cannot contend that he is entitled to retain possession of the land, which was declared surplus by the competent authority.

No other point has been argued.

For the reasons mentioned above, the appeal is dismissed. Needless to say that the appellant shall be entitled to approach the Civil Court to establish his right and title over the property in question and may also pray for grant of consequential benefits.

G.S. SINGHVI, CJ

3rd February, 2006

G. BHAVANI PRASAD, J

Vr/vtv